

## Silver, Wendy

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**From:** Fells, Sandy  
**Sent:** Wednesday, February 12, 2014 3:02 PM  
**To:** Silver, Wendy  
**Subject:** FW: Inquiry on behalf of Mr. Andrew Johnson

Hi, Wendy -- Are we able to respond to the Senator's staffer's questions below?

Many thanks!  
Sandy

Sandy Fells  
Regional Congressional Liaison  
EPA, Region 8, Denver  
303-312-6604

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**From:** Green, Reagen (Enzi) [<mailto:Reagen.Green@enzi.senate.gov>]  
**Sent:** Wednesday, February 12, 2014 2:47 PM  
**To:** Fells, Sandy  
**Subject:** RE: Inquiry on behalf of Mr. Andrew Johnson

Hi Sandy,

Thank you for the information. I do have one question. Andy said he was never told he needed the 404 permit. Whose responsibility is it to let residents know of permits outside the states requirements? Also, did Andy's attorney request for the 10 day deadline in the Jan. 30 letter be extended?

Thanks,  
Reagen

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**From:** Fells, Sandy [<mailto:Fells.Sandy@epa.gov>]  
**Sent:** Wednesday, February 12, 2014 2:32 PM  
**To:** Green, Reagen (Enzi)  
**Cc:** Borum, Denis  
**Subject:** Inquiry on behalf of Mr. Andrew Johnson

Hi, Reagen – Sorry for the delay in getting back to you. Our EPA Region 8 Water Program attorney was not in the office yesterday, but I spoke with her this morning. From our attorney, and from our Water Program staff person who is handling

Mr. Andrew Johnson's situation, I have the following description of events:

Mr. Johnson built a dam on Six Mile Creek without a Clean Water Act (CWA) section 404 permit. The permit he said he received from the County was not a CWA section 404 permit. EPA has not seen a permit from the County, only one from the Wyoming State Engineer's Office.

Potential violations of CWA section 404 are typically examined first by the U.S. Army Corps of Engineers which initially determines the jurisdictional status of the water body affected. The Corps tried to work with Mr. Johnson starting in September of 2012 to address the CWA issues with his project. At the request of the Corps, the EPA took over the case in February 2013.

On May 22, 2013, EPA sent Mr. Johnson a Letter of Potential Violation, notifying him that EPA believes he may be in violation of the CWA and inviting him to provide any information showing that our understanding of his activities is incorrect or that the activities do not constitute a violation of the CWA. Mr. Johnson did not respond to our letter. The EPA, Corps, State Engineer's Office and Mr. Johnson did have a phone conversation in June of 2013; but during this conversation, Mr. Johnson did not provide any information showing that EPA's understanding of his activities is incorrect or that the activities do not constitute a violation of the CWA. Also, the EPA representatives on the call do not have any record of telling Mr. Johnson that EPA would contact him in early July.

On January 30, 2014, the EPA sent Mr. Johnson an Administrative Order for Compliance, finding Mr. Johnson to be in violation of the CWA. The Order required Mr. Johnson to respond to the EPA within ten days of his intent to comply with the Order. The Order also required that Mr. Johnson take steps to come into compliance with the CWA. Penalties are available under the CWA for non-compliance with an Order.

On February 7, 2014, the EPA received a FOIA request from Mr. Johnson's attorney, who also claimed that Six Mile Creek may not be a jurisdictional water under the CWA and that Mr. Johnson's work was exempt from regulation under the CWA. The EPA and the Corps are examining these assertions, and EPA is trying to set up a conference call with Mr. Johnson and his attorney to discuss these issues. It appears that call could happen sometime this week.

EPA's next steps: work on responding to the FOIA, examine Mr. Johnson's asserted defenses, and speak with Mr. Johnson and his attorney.

I hope this information is helpful. I'm sure you understand that I am precluded from obtaining much more detail regarding this case, as it's now between the attorneys. If you have questions, please let me know; and I'll get back to you with as much info as I can.

Thanks, again!  
Sandy

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